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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,162	08/22/2003	Donald E. Weder	8403.964	1490
30589	7590	12/02/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			GELLNER, JEFFREY L	
		ART UNIT		PAPER NUMBER
		3643		

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/647,162	WEDER, DONALD E.
	Examiner	Art Unit
	Jeffrey L. Gellner	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 September 2004.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-70 is/are pending in the application.

4a) Of the above claim(s) 17-20, 22, 28, 38-41, 43, 59-62 and 64 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16, 21, 23-27, 29-37, 42, 44-58, 63, 65-70 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

Examiner agrees with Applicant (at page 20 of Remarks received 15 June 2004) and considers the instant application to have a priority date of 10 February 1995.

### ***Election/Restrictions***

Applicant's election of Species P (Figs. 20-22) in the Response received on 20 September 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 17-20, 22, 28, 38-41, 43, 59-62, and 64 are withdrawn from examination since they are drawn to nonelected species (that is, the limitations in the withdrawn claims are not shown in the elected Figures 20-22 or discussed, explicitly or implicitly, in paragraph 011§).

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, 21, 23-27, 29, 30-36, 42, 44-57, 63, and 65-70 are rejected under 35 U.S.C. §103(a) as being unpatentable over Newport (AU 4231978; the 1<sup>st</sup> foreign patent listed on page 7 of

Applicant's 1449) in view of Geigel (US 3,357,152; the 2<sup>nd</sup> document from the bottom of page 2 of Applicant's 1449).

As to Claims 1, 5, 6, 8, 12, 30, 34, 35, 50, 51, 55, 56, Newport discloses a flexible floral sleeve (Figs. 1 and 2) for containing a pot or floral grouping comprising a substantially flattened body (Fig. 1) having a first panel, a second panel, an upper end, a left side edge absent a gusset (Figs. 1 and 2), a right side edge absent a gusset (Figs. 1 and 2), and an inner retaining space, the flattened body further comprising a lower portion (below 10 in Fig. 1) and an upper portion (above 10 in Fig. 1) which is detachable from the lower portion for both panels via a detaching element (10 of Fig. 1) between the upper portion and lower portion, and wherein the lower portion of the floral sleeve is completely tapered, or at least partially tapered, between the half hexagonal shape in the lower end and the detaching element. Not disclosed is the bottom edge a straight seal between the left and right side edges and the left side edge and right side edge angled inwardly near the lower end to form a half hexagonal shape; and, the upper edge of the lower portion with a non-linear, wavy, angular, pattern. Geigel, however, discloses a bottom edge of the lower end comprises a straight seal between the left side edge and the right side edge (26 of Fig. II; col. 1 lines 43-47) and the left side edge and right side edge angled inwardly near the lower end to form a half hexagonal shape (24a, 24b, and 26 of Fig. II). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Newport by having a straight seal in the lower end so as to have a bag to hold a floral grouping so as not to leak and further to have the sleeve with the left side edge and right side edge angled inwardly near the lower end to form a half hexagonal shape so as to avoid the cost of making a

gusset (Geigel at col. 1 lines 27-32); and to have an upper edge of the lower portion with a non-linear, wavy, angular, pattern to meet consumer demand.

As to Claims 2, 9, 13, 31, and 52, Newport as modified by Geigel further disclose apertures (12 of Fig. 1 of Newport) for supporting on a wicket.

As to Claims 3, 10, 14, 32, and 53, Newport et al. as modified by Geigel further disclose the floral sleeve sized to surround a floral grouping and pot (Fig. 1 of Newport).

As to Claims 4, 33, and 54, Newport as modified by Geigel further disclose the floral sleeve with a skirt portion (region below 10 of Fig. 1 of Newport).

As to Claims 7, 11, 15, 36, and 57, Newport as modified by Geigel further disclose the floral sleeve with a line of perforations (10 of Fig. 1 of Newport).

As to Claims 21, 42, and 63, the limitations of Claims 1, 30, and 51 are disclosed as described above. Not disclosed is a bonding material disposed in the outer surface of the floral grouping. Examiner takes official notice that it is old and notoriously well known in the floral sleeve art to use a ribbon, or band, with a floral sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the floral sleeve of Newport as modified by Geigel by having in a ribbon, or band, so as to meet consumer demand.

As to Claims 23, 24, 44, 45, 65, and 66, Newport as modified by Geigel further disclose a floral sleeve of impermeable material, polymeric material (see Newport).

As to Claims 25, 46, and 67, Newport as modified by Geigel further disclose a floral sleeve with a ornamentation ("printing" of lower portion of page 3 of Newport).

As to Claims 26, 47, and 68, Newport as modified by Geigel further disclose a floral sleeve with the skirt portion extending outwardly of the base (see Figs. 1 and 2 of Newport).

As to Claims 27, 48, and 69, Newport as modified by Geigel further disclose a floral sleeve with a closed lower end (see Fig. 2 of Geigel).

As to Claims 29, 49, and 70, Newport as modified by Geigel further disclose a floral sleeve about a potted plant (Fig. 2 of Newport).

Claims 16, 37, and 58, are rejected under 35 U.S.C. §103(a) as being unpatentable over Newport (AU 4231978; the 1<sup>st</sup> foreign patent listed on page 7 of Applicant's 1449) in view of Geigel (US 3,357,152; the 2<sup>nd</sup> document from the bottom of page 2 of Applicant's 1449) in further view of Benoit (US 4,554,192).

As to Claims 16, 37, and 58, the limitations of Claims 1, 30, and 51 are disclosed as described above. Not disclosed is the sleeve assembled in a stack of sleeves. Benoit, however, discloses a stack of sleeves (col. 5 lines 8-13). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the floral sleeve of Newport as modified by Geigel by having in a stack as disclosed by Benoit as an efficient means of storing and shipping.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-70 have been considered but are moot in view of the new ground(s) of rejection or withdrawal.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

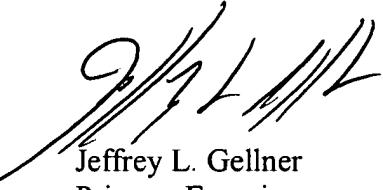
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner  
Primary Examiner